

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

MOTION FOR PARTIAL STAY

Fouce Amusement Enterprises, Inc., by its attorneys and pursuant to Sections 1.43 and 1.429(k) of the Commission's Rules, respectfully requests a partial stay of the Sixth Report and Order<sup>1</sup> in the above-referenced proceeding. Fouce is the licensee of television station KRCA, Channel 62 ("KRCA"), which operates in the Los Angeles television market.<sup>2</sup>

KRCA is seeking a stay of the effective date of that portion of the Commission's Sixth Report and Order and DTV Table of Allotments which would be affected by a modification of the DTV channel assignment to KRCA. KRCA also requests deferral of processing of any application for a channel which would be covered by this stay.

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<sup>1</sup> In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (released April 21, 1997).

<sup>2</sup> KRCA is concurrently filing a Petition for Reconsideration of the Sixth Report and Order.

## INTRODUCTION

Compelling grounds exist for a partial stay of the Commission's Sixth Report and Order. The DTV Table of Allotments adopted in the Sixth Report and Order purports to assign a paired DTV channel to all eligible broadcast television stations. KRCA's DTV allotment on Channel 69, however, is not a viable DTV allotment because the DTV channel would be collocated with a substantial number of adjacent-channel land mobile operations. As the Commission has already determined, these circumstances make the DTV channel virtually nonoperational.

As addressed below, KRCA's DTV assignment is arbitrary and capricious and otherwise unlawful. A partial stay of the Los Angeles region allotments and a freeze on processing applications for such allotments is necessary to give the Commission the time and flexibility to provide an alternative DTV assignment to KRCA. Failure to provide the requested relief will cause KRCA irreparable harm because KRCA will be denied a viable DTV channel. The Commission's failure to release necessary technical information makes it impossible to identify a more limited group of potentially affected DTV assignments as to which the stay must be applied.

## ARGUMENT

A stay of a Commission's Rules should be granted where (1) petitioner is likely to prevail on the merits; (2) the petitioner will suffer irreparable harm if the stay is not granted; (3) other interested parties would suffer little, if any, harm if

the stay were granted; and (4) a stay is in the public interest. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 293 F.2d 527 (D.C. Cir. 1961). Under these standards, a stay is fully warranted in this case.

**I. KRCA Is Likely to Prevail on the Merits.**

As more fully addressed in KRCA's Petition for Reconsideration filed concurrently with this motion, KRCA's DTV allotment in the Sixth Report and Order is so compromised because of adjacent land mobile operations and its position outside the core spectrum that it cannot be considered a viable DTV channel. The Commission's allotment of DTV Channel 69 to KRCA is thus plain error and requires modification.

KRCA's DTV allotment flatly contradicts the Commission's factual conclusion that it eliminated all short-spaced DTV to land mobile channel assignments of 10 miles or less. KRCA's DTV Channel 69 allotment is collocated with numerous land mobile operators. The Commission's minimum spacing requirements, past experience with NTSC-to-land-mobile adjacent channel operation, and the comments filed in this proceeding all demonstrate that DTV Channel 69 operation would result in harmful interference to such extreme short-spaced land mobile facilities.

The record and KRCA's own engineering analysis demonstrate that the obligation to avoid harmful interference to land mobile operations would preclude

KRCA from operating a viable DTV channel. Even if operation of KRCA's DTV transmitter were technically possible, KRCA would not meet the Commission's minimum power requirement, and would be unable to come even close to replicating its service area. Thus, contrary to the policy objectives and assignment criteria used in the Sixth Report and Order, the Commission has effectively denied KRCA, and its viewers, access to a DTV channel.<sup>3</sup>

The Commission's decision to burden KRCA, and no other Los Angeles area broadcast station, with two non-core DTV assignments is also a violation of the Communications Act and is arbitrary and capricious. Section 336(c) of the Act requires that, if the Commission grants a license for advanced television services, "either the additional license or the original license held by the licensee be surrendered."<sup>4</sup> With NTSC Channel 62 and DTV Channel 69, KRCA would be required to surrender both channels, and could not retain one license as Section 336(c) provides.

Moreover, KRCA is the only Los Angeles area station that does not have at least one core channel assignment. The Commission has recognized that a broadcaster with a core DTV channel would have the advantage of being able to "establish early and permanent channel identification with viewers" and to

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<sup>3</sup> In this regard, the Commission has also failed to carry out the requirements of the Telecommunications Act of 1996. Section 336(a) of Title 47, United States Code, is premised on the Commission providing an "additional license" to existing broadcasters. A non-functional DTV channel cannot be deemed suitable for licensing.

<sup>4</sup> 47 U.S.C. § 336(c).

"minimize the expense and confusion associated with second channel transitions."<sup>5</sup>

The Commission's statement of basis and purpose fails to explain why KRCA is uniquely denied these competitive advantages of a core channel. For these reasons, KRCA is likely to prevail on the merits.

## **II. KRCA Will Suffer Irreparable Harm if a Stay Is Not Granted**

The Commission's DTV proceeding is replete with Commission statements attesting to the benefits a DTV channel will provide both the consumer and the broadcaster. Among other benefits, a DTV channel that permits service replication will give broadcasters the essential capability to reach and retain the audience they now service.<sup>6</sup>

KRCA will suffer irreparable harm if a stay is not granted. KRCA has no viable DTV assignment. Unless the Commission makes a modification of assignments, KRCA will be effectively denied a DTV channel assignment until one of its competitors surrenders a usable DTV channel at the end of the transition period.

To the extent the Commission grants construction permit applications to Los Angeles area broadcasters, it may hinder its ability to correct the KRCA allotment. A partial stay would provide the Commission the needed flexibility to

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<sup>5</sup> In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968, 10979 (1996).

<sup>6</sup> Sixth Report and Order, ¶ 29.

reassign channels in the Los Angeles market. In a heavily congested market like Los Angeles, it is virtually impossible to resolve an individual allotment, like KRCA's, without affecting other stations. In order to preserve the Commission's ability to resolve its error by assigning a viable channel to KRCA, the flexibility provided by a partial stay is absolutely critical.

### **III. Partial Stay of the Commission DTV Allotments Will Not Harm Other Broadcasters**

A partial stay will merely preserve the status quo pending Commission review of its DTV allotments. Several factors alleviate any harm to other broadcasters.

First, KRCA's stay request is narrowly tailored and affects only broadcasters in the Los Angeles region (or adjacent markets).<sup>7</sup> Thus, the vast majority of broadcasters and viewers will be uncumbered by KRCA's requested action.

Second, there presently exists a high level of uncertainty regarding the availability of DTV allotments in the Mexican border area. While the Commission believes that the DTV Table of Allotments will be "generally" acceptable to Mexico, it acknowledges that it expects that minor adjustments to its DTV Table will be

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<sup>7</sup> When the Commission releases its OET Bulletin No. 69, it may be possible to propose specific alternative channels, or at least to identify a more limited group of allotments that might be affected by modification of KRCA's allotment.

necessary.<sup>8</sup> Even seemingly minor adjustments to the DTV Table may result in substantial reshuffling of channel allotments. Under these circumstances, the limited stay sought by KRCA will not impose any more uncertainty than is already present for broadcasters in the affected area.

Moreover, broadcasters in the Los Angeles area should not be delayed in offering DTV service. Although some networks have committed to an 18-month build-out of DTV service, the time needed to straighten out the DTV allotments in Los Angeles should not preclude broadcasters from meeting this target. In any event, broadcasters currently lack the technical information from the Commission that is necessary to fully design and build their stations. Thus, a stay should not hinder build-out of DTV service.

#### **IV. Stay of the Commission's Action is in the Public Interest**

In adopting a DTV channel assignment methodology, the Commission's primary goal was "full accommodation," that is, to "ensure that all eligible full service broadcasters are able to provide the new digital TV service."<sup>9</sup> The second principal objective was "service replication," i.e., "to provide DTV coverage comparable to a station's current [NTSC] service area."<sup>10</sup>

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<sup>8</sup> Sixth Report and Order, ¶ 171.

<sup>9</sup> Sixth NPRM, 11 FCC Rcd at 10974; see Sixth Report and Order, ¶ 11.

<sup>10</sup> Sixth Report and Order, ¶ 12.

KRCA's DTV allotment utterly fails to accomplish these goals. First, as demonstrated above, operation of KRCA's DTV channel would be virtually impossible for technical reasons given the requirement that it avoid harmful interference to land mobile operators.<sup>11</sup> Second, even if operation of KRCA's DTV transmitter were technically possible, KRCA would not meet the Commission's minimum power requirement, and would be unable to come even close to replicating its service area. Grant of the requested stay would therefore serve the public interest by preserving the Commission's ability to provide KRCA and its viewers with an alternative DTV allotment and thereby achieve its DTV allotment goals.

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<sup>11</sup> See 47 C.F.R. § 73.687(e)(4).



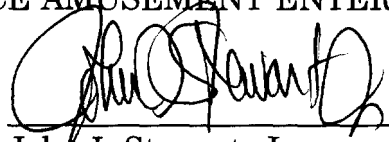
## CONCLUSION

For the foregoing reasons, the Commission should stay that portion of the Sixth Report and Order and DTV Table of Allotments that provides DTV allotments to Los Angeles region broadcaster stations that might affect the Commission's ability to assign a viable DTV channel to KRCA. The Commission should further not accept any applications for those allotments.

Respectfully submitted,

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